

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION     )  
FOR TRANSFER NO. 5401 IN THE     )  
NAME OF JEROME CHEESE            )  
COMPANY                             )  
\_\_\_\_\_                             )

**PRELIMINARY ORDER**

(Note: This order is now final)

This matter having come before the Idaho Department of Water Resources (the "Department") in the form of a protested application for transfer and the Department having held a conference and a hearing in the matter, the hearing officer enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

**FINDINGS OF FACT**

1. On February 13, 1992, the Department issued License No. 36-07337A as follows:

Source:	Ground water
Priority:	November 25, 1977
Rate of diversion:	3.32 cubic feet per second ("cfs")
Volume:	664 acre feet per year ("afy")
Point of diversion:	NE1/4SW1/4 and NW1/4SE1/4, Section 5, T8S, R14E, B.M.
Use:	Irrigation
Season of use:	March 15 to November 15
Place of use:	166 acres within parts of Section 5, T8S, R14E, B.M.

On December 29, 1997, The Snake River Basin Adjudication ("SRBA") court entered a partial decree on the right decreeing the right to John A. Sandy and Florence M. Sandy.

*(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).*

2. On November 12, 1997, the Department approved Transfer No. 5051 in the name of Alvina Almeida and Dolor Almeida of a portion of License No. 36-07337A as follows:

Source:	Ground water
Priority:	November 25, 1977
Rate of diversion:	0.14 cfs
Volume:	28 afy

Point of diversion: SENW Section 1, T6S, R15E, B.M.  
Use: Stockwater and commercial  
Season of use: Year-round  
Place of use: Stockwater - SWNE and SENW Section 1, T6S, R15E, B.M.  
Commercial - SENW - Section 1, T6S, R15E, B.M.  
Remarks: This part of the license has been renumbered to 37-08867.

3. The remaining part of License No. 36-07337A is identified as 36-07337C as follows:

Source: Ground water  
Priority: November 25, 1977  
Rate of diversion: 3.18 cfs  
Volume: 636 afy  
Point of diversion: NESW, NWSE, Section 5, T8S, R14E, B.M.  
Use: Irrigation  
Season of use: April 1 to October 31  
Place of use: 159 acres in Section 5, T8S, R14E, B.M. as follows:  
NESW - 9, NWSW - 1, SESW - 16, NESE - 33, NWSE - 33, SWSE - 34, and SESE - 33

4. On December 16, 1998, John A. Sandy ("Sandy") and Davisco Foods, Inc. ("Davisco") entered into a Memorandum of Agreement in which Sandy agreed to sell 33 miner's inches ("0.66 cfs") of water from License No. 36-07337C to Davisco.

5. On December 23, 1998, Jerome Cheese Company ("applicant") filed Application for Transfer No. 5401 ("application") with the Department seeking to change the point of diversion, place of use, season of use and nature of use of 0.66 cfs and 99 afy of water from irrigation use in Section 5, T8S, R14E, B.M. to year-round commercial use in a cheese plant ("plant") in the NWNE Section 25, T8S, R16E, B.M. The applicant proposes to drill two new wells in the NWNE Section 25, T8S, R16E, B.M. near the cheese plant and to dry up 33 acres located in the SWSE Section 5, T8S, R14E, B.M. to provide the water for the transfer.

6. The Department published notice of the Application which was subsequently protested by Bill Chisholm and Lee Halper ("protestants"). The city of Jerome ("city") did not file a timely protest to the application but on June 10, 1999, filed a Petition for Intervention and on June 16, 1999, filed an Amended Petition for Intervention. On July 2, 1999, the department issued an Order Denying Petition to Intervene filed by the city. On July 19, 1999, the city filed a Motion for Reconsideration of Order Denying Petition for Intervention and Alternatively Motion to File a Late Protest. On July 23, 1999, the department issued an Order Rejecting Motion for Reconsideration and Motion to File a Late Protest. The order, however, allowed the city to appear as a public witness as provided in IDAPA 37.01.01355 (Procedure Rule 355). A public witness is not a full party and does not have the right to file a petition for

reconsideration, a brief or exceptions in connection with a recommended order, a preliminary order or a final order issued by the hearing officer or by the Director.

7. Issues identified by the protestants are as follows:
  - a. The proposed changes will injure other water rights.
  - b. The proposed changes will constitute an enlargement in use of the original right.
  - c. The proposed changes are not in the local public interest.
  - d. The proposed changes are not consistent with the conservation of water resources within the state of Idaho.

8. On July 27 and 28, 1999, the Department conducted a hearing in the matter in Twin Falls, Idaho. The applicant was present and was represented by Christopher Meyer and Mike Creamer. The protestants were present and represented themselves. The city did not appear at the hearing but on August 13, 1999, submitted written comments for consideration. On August 31, 1999, the applicant responded to the public witness comments of the city.

9. Exhibits premarked, offered or accepted as a part of the record are as follows:
  - a. Applicant's Exhibit 1 - Schematic generally showing water flow through the applicant's cheese plant
  - b. Applicant's Exhibit 2 - Schematic titled Jerome Cheese Economic Factors in Magic Valley
  - c. Applicant's Exhibit 3 - Bar chart titled Jerome Cheese Company Water Conservation Measures
  - d. Applicant's Exhibit 4 - Snake Plain Aquifer
  - e. Applicant's Exhibit 5 - Jerome Cheese Water Right Transfers Annual Water Budget Comparisons
  - f. Applicant's Exhibit 6 - Jerome Cheese Co. Water Use Schematic
  - g. Applicant's Exhibit 7 - NOT OFFERED
  - h. Applicant's Exhibit 8 - NOT OFFERED

- i. Applicant's Exhibit 9 - Well Interference Analysis Proposed Jerome Cheese Well(s) Q = 0.66 cfs
- j. Applicant's Exhibit 10 - Well Interference Analysis Proposed Jerome Cheese Well(s) Q= 3.2 cfs
- k. Applicant's Exhibit 11 - Well Interference Analysis Proposed Jerome Cheese Well(s) Q = 3.86 cfs (Sandy and Hincks Transfers)
- l. Applicant's Exhibit 12 - NOT OFFERED
- m. Applicant's Exhibit 13 - Summary of Jerome Cheese Water Transfers
- n. Applicant's Exhibit 14 - Blue line print - Site Plan for Jerome Cheese
- o. Applicant's Exhibit 15 - Blue line print - Wellhouse Water Supply Plan and Elevations for Jerome Cheese
- p. Applicant's Exhibit 16 - Second Addendum to Agreement for Sale of Water Right
- q. Applicant's Exhibit 17 - First Addendum to Agreement for Sale of Water Right
- r. Applicant's Exhibit 18 - GIS map of Section 5
- s. Applicant's Exhibit 19 - GIS shape file - Sandy Property
- t. Protestant's Exhibit A - Letter dated July 20, 1999 to Robert E. Williams from Gary G. Allen together with a draft Complaint for Declaratory Relief

10. The city provides approximately 347 afy to 392 afy of water for use in the cheese plant and has provided water since 1993. The applicant wants to provide water to the plant from its own wells due to concerns about water quality (sediment), water pressure and the cost of water provided by the city but may continue to use water available from the city as a backup source.

11. The application would provide water from 33 acres to be dried up within the SWSE Section 5, T8S, R14E, B.M. with a rate of up to 0.66 cfs, an annual consumptive volume of 99 af and an annual diversion volume of 132 af. Evidence and testimony showed that the 33 acres has been irrigated within the last five (5) years as authorized by the license. In the fall of 1997, the Northside Canal Company constructed a water quality improvement pond within the 33 acre tract taking a portion of the 33 acres out of irrigation.

12. The water sought under this application is in addition to the amount of water sought under Application for Transfer No. 5436 which was also filed in the name of Jerome Cheese Company.

13. The proposed new wells are located upgradient of the licensed wells by approximately 16 miles. One well has been designed with a 12" diameter bore to a total depth of about 400 feet. The proposed surface seal is a 20" diameter initial bore to a depth of 80 feet with a 16" diameter casing to be installed in the 20" hole. The design discharge is 1,000 gallons per minute. The design has been reviewed and approved by the Division of Environmental Quality, Idaho Department of Health and Welfare. The second well has not been designed yet, since one well may provide the amount of water needed.

14. The applicant employs about 150 people at its cheese plant and has an annual payroll and salaries of about 4 million dollars. The applicant also pays about \$300 million dollars annually to dairies located in five Idaho counties.

15. The applicant has designed its water system to incorporate both city water and water from the proposed new well(s) in its plant. The city has reviewed plans of the applicant's water system and has the opportunity to require compliance with city construction standards for changes to the city's water distribution system. The applicant has reviewed the need for other permits and is in the process of obtaining approvals which will be required in connection with the changes proposed in the application.

16. The applicant recycles and reuses water in its plant reducing the amount of water needed by the plant to about one-tenth of the amount needed if reuse and recycling were not practiced.

17. The protestants allege that dairies are not in the local public interest, and that since the cheese plant uses milk originating from dairies, the cheese plant is not in the local public interest. The protestants also allege that nitrates from dairy waste contaminate groundwater.

18. None of the protestants own water rights which would be injured by the proposed transfer or have shown that water rights of others would be injured.

19. In its public witness comments, the city alleges that the application is not in the public interest, since the applicant might cease using water provided by the city and might cease using the wastewater treatment system of the city, thus depriving the city of user fees. The city and protestants also allege there will be an expansion in use of water by the applicant, if the applicant uses its own well and still uses water provided by the city in the cheese plant.

20. The applicant is authorized to use the wastewater treatment facility of the city for the discharge of effluent from its cheese plant and by agreement with the

Northside Canal Company at times discharges effluent to the canal company ditches. Water discharged to the Northside Canal Company is monitored to meet Idaho Water Quality standards.

21. The Industrial User Agreement between the city and the applicant authorizes the maximum daily discharge of 458,000 gallons per day to the city's water treatment facility. Present discharge to the wastewater treatment facility is about 350,000 gallons of effluent per day.

### **CONCLUSIONS OF LAW**

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code; ....

2. The applicant carries the burden of coming forward with evidence that the proposed change will not injure other water right holders, that it will not constitute an enlargement of the use and will be consistent with principles of conservation of the water of the state of Idaho.

3. Both the applicant and the protestants have the responsibility of coming forward with evidence regarding matters of public interest of which they are each most cognizant.

4. The applicant has the ultimate burden of persuasion for all of the criteria of Section 42-222, Idaho Code.

5. The change proposed in the application will not injure other water rights, since pumping at the proposed well site will have a limited drawdown effect on other wells in the area and the impact of pumping at the proposed well site will not have a substantially different affect on the Snake River as pumping at the licensed site.

6. When considering the enlargement in use issue, the analysis applies to the right sought for transfer, not to the municipal rights of the city of Jerome. The rate of diversion, consumptive volume and diversion volume for the new use will not exceed the amounts authorized under the part of License No. 36-07337C being transferred.

7. The applicant's use of water from its own proposed well with an alternate or back-up source of water provided by the city does not constitute an enlargement in

use.

8. The applicant is authorized to discharge effluent from its cheese plant to the wastewater facility of the city and is not required to seek separate approval for the discharge. The applicant also has approval of the Northside Canal Company to discharge effluent to its system.

9. Section 42-203A, Idaho Code, defines "local public interest" as the affairs of the people in the area directly affected by the **proposed use**, which in this case, is "commercial" use in a cheese plant. The application further describes that water will be used for washing processing equipment, cheese washing during production and restrooms. Use of water by dairies or cows is not a part of the **proposed use**.

10. The changes proposed in the application are in the local public interest.

11. The proposed changes are consistent with the conservation of water resources within the state of Idaho.

12. The Department should approve the application with certain conditions.

### **ORDER**

IT IS THEREFORE, hereby ORDERED that Transfer No. 5401 in the name of Jerome Cheese Company is **APPROVED** subject to the following conditions:

1. Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.
2. The right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
3. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion and the total volume of water diverted under the transfer.
4. The right holder shall measure and annually report to the West Water Measurement District of the Eastern Snake Plain Aquifer the annual volume of water diverted under this approval and the maximum rate of diversion.
5. Prior to use of water under this approval, the right holder shall provide assurance to the Department of how and when the 33 acres in the SWSE Section 5, T8S, R14E, B.M. are dried up. The right holder is not

authorized to divert water under this approval if the 33 acres are being irrigated.

6. The use authorized under this approval shall comply with applicable county zoning and use ordinances.
7. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. The total instantaneous rate of diversion of water from all points of diversion under this transfer shall not exceed 0.66 cfs, nor a total annual volume of 99 acre feet.

Remarks:

1. Commercial use is for a cheese plant.
2. Two points of diversion are located in the NWNE Section 25, T8S, R16E, B.M.

Signed this 12<sup>th</sup> day of October, 1999.



L. GLEN SAXTON  
Hearing Officer